

IN SENATE OF THE UNITED STATES.

JUNE 29, 1842.
Ordered to be printed.

Mr. TAPPAN submitted the following

REPORT :

The Committee on Private Land Claims, to which committee was referred the memorial of Menon, on behalf of the heirs and representatives of Philip Renaut, asking the confirmation by Congress of the decision of the commissioner for the district of Kaskaskia, of the 31st of December, 1810, affirming "to the legal representatives of the said Philip Renaut," "a tract of land of one league in front, by five in depth at Pimiteau, so called on the Illinois river; and of a tract of one league in front by two in depth, at the Grand Marais," &c., "or adequate compensation therefor in such mode as Congress may deem most appropriate" (American state papers, volume 2, public lands, page 239); and the committee are referred to page 191, of the same volume, for evidence of Renaut's title, which appears to have been discovered by the commissioners in "a document belonging to the office of the recorder of the county of Randolph, purporting to be a record of ancient French grants, made in Illinois between the years 1722 and 1740, in which document, under the entry of each grant, is written the name of Boisbriant and Des Ursins." The document does not appear to have been signed by Boisbriant and Des Ursins in any official capacity; but the committee are referred to other documents, in which they are described as "first king's lieutenant of the province of Louisiana, commanding at the Illinois, and principal secretary of the Royal India Company."

This grant of cession of Boisbriant and Des Ursins to Renaut, seems to have been considered by the commissioner as a complete title; the committee doubt whether it was intended for a complete title, for beside its not being on the face of it an official act, they find that in one of these brief concessions of Boisbriant and Des Ursins (page 191) to Charles Danie, they concede the said land, "whereon he may from this date commence working, clearing, and sowing, *in expectation of a formal concession*, which shall be sent from France by Messrs. the directors of the Royal India Company;" and they understand that generally the officers of the French Government in the colonies of France, could only grant an inchoate title to lands subject always to confirmation or rejection by the home government.

In the instruction from the Secretary of the Treasury to the commissioners at Kaskaskia, land laws, part 2, page 676, it is stated that, "What authority may have been vested, under the French Government, in the local commandants, to grant permission to settle, is not precisely ascertained; but such permission, if at all authorized, never extended beyond the quantity of three hundred and sixty arpens, must have been followed by actual settlement, and never conveyed the fee simple; for the power to grant land was exclusively

vested in the Governor and intendant, and, even with an express reservation that a patent of confirmation from the king was necessary."

It does not appear that such confirmation was ever obtained by Renault; but it does appear that about one half of the tract, "at the place called the Great Marsh," was granted by Renault to a number of persons, to whom or their assignees, such grants have been confirmed by this Government (same, page 192); but as these grantees were in the actual occupancy of this part of Renault's grant, at the treaty of 1763 between France and England, they were entitled to a confirmation of their claim as inhabitants of a ceded or conquered territory, without any necessity of showing that the origin of their title was other than possession.

It appears that Philip Benaut left the Illinois country and returned to France in the year 1743, and that neither he nor his heirs made any claim to these lands, or had possession of them for about 63 years, when application was made to the commissioners at Kaskaskia by "their agent;" from which neglect it may fairly be inferred that the claim was not considered as one of any value.

By the treaty of 1763, those subjects of France who wished to retire from the Illinois were permitted to do so, and were also permitted to sell their estates to subjects of Great Britain, provided it were done within eighteen months, &c.

Supposing that Renault had a pre-emption right, under the cession given to him by Boisbriant and Des Ursins, and might have had his cession confirmed by the French Government, we think it can not be maintained, that by the treaty of 1763, Great Britain was under any obligation to respect such claim; for while the law of nations would guaranty to the inhabitants of ceded territory their possessions, if they were willing to become subjects of the new government, and take the oath of allegiance to it, that law goes no further, but it requires express treaty stipulations to authorize such inhabitants as were unwilling to change their allegiance, to sell out and remove from the territory; much more would it require express treaty stipulations to give a perfect title to land to one who only held an inchoate title from the ceding government, who neither was or offered to become a subject of the new government. The law of nations, not transferring such claims as Renault's and making them obligatory upon the power receiving a cession of territory in full sovereignty, and the treaty of 1763 having ceded by France the territory in which these claims were included, without any reservation of them, it seems to follow that if Renault's [heirs] have a claim upon anybody, for the perfection of their title, it is upon the French Government, and that such claim was not transferred with the territory to Great Britain.

Great Britain held the undisputed sway over the country in question, from 1763 to 1776, when it became subject to the commonwealth of Virginia within whose chartered limits it is situated; no application seems to have been made by Renault's heirs to the British Government, until by the treaty of 1783 that power ceased to have any further claim to dominion over it, and when it is considered that the British laws did not permit aliens to hold land in the dominions governed by them, it is not to be supposed, that if Renault or his heirs had claimed a confirmation of this grant from that Government, they could have obtained it; for no instance has been shown where in that Government have confirmed grants of land in their colonial territories to those who were not their subjects.

The conquest of Illinois by Virginia during the revolutionary war, was

not considered as an acquisition of foreign domain, but as an extension of authority over her own territory. She admitted the inhabitants whom she found there to become citizens on taking the oath of fidelity to the commonwealth of Virginia; but she did not admit the right of a foreigner to hold land on any terms whatever.

On the 1st of March, 1784, Virginia conveyed this territory to the United States, with several reservations; one of which, and the only one bearing upon this claim, is, that the French and Canadian inhabitants, and other settlers of the Kaskaskia, St. Vincent, and the neighboring villages, who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties." The United States thus became the owners of all the lands in Illinois, without any reservation in favor of the claims against any preceding government; and as such owners they proceeded in good faith to ascertain the extent and location of the claims of the "inhabitants and other settlers of the Kaskaskia, St. Vincent, and other villages," and to quiet them in their possessions; and for this purpose Congress, on the 20th of June, 1788 (see land laws, 29), instructed the Governor of the Western Territory "to repair to the French settlements, on the river Mississippi, at and above the Kaskaskia, and examine the titles and possessions of the settlers," &c., in order to determine what quantity of land they may severally claim, which shall be laid off for them at their own expense. On the 29th of August, in the same year (page 38, volume 1, land laws), Congress further instruct the Governor of the Western Territory as follows:

"When you have examined the titles and possessions of the settlers on the Mississippi, in which they are to be confirmed, and give directions for laying out the several squares, which the settlers may divide, as they shall think best, among themselves by lot, you are to report the whole of your proceedings to Congress."

So far Congress did not by any act intimate any intention to go beyond their agreement with Virginia, in accepting the cession of her western lands; but on the 3d of March, 1791 (land laws, page 41), Congress granted "not exceeding 400 acres to any one person" to those who had *actually improved* and *cultivated* in the Illinois country, under a supposed grant of the same;" none of these enactments can be construed to favor this claim; but the "act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," passed the 26th of March, 1804 (1 land laws, page 104), appointed commissioners to receive, record, and report to Congress, upon claims to land, "by virtue of any legal grant made by the French Government prior to the treaty of Paris, of the 10th of February, 1763," before whom this claim was laid; and it is upon the reports of those commissioners that the memorialist place their principal reliance in support of it. These reports are in American State Papers, volume 2, public lands, pages 189 and 239; and although they are nothing more than reports to Congress, and conclude nothing, yet, as they are in favor of the claim, if their facts and reasonings are correct, the resulting opinion should be adopted. But the committee are of opinion that the commissioners committed a fundamental error in considering the entry on the book found in the office of the recorder of Randolph county, and which is set forth in French and English in the book last cited, pages 190 and 191, as evidence of a grant in fee simple to Renaut, for reasons before given.

Although it was proper for the commissioners to receive this claim, and report it to Congress, there is nothing in the law appointing them, or in the instructions under which they acted, which binds the Government to sanction their decisions; and their reports furnish no facts which shake the opinion of the committee, that the concession of Boisbriant and Des Ursins was but a warrant of survey, and wholly inoperative as a conveyance of land.

The claimants in this case, seeing the necessity of proving some further action of the French Government, to perfect their title, suppose an official letter of the commandant at New Orleans, upon which this grant was made, but no evidence of such letter is exhibited.

On the whole, Renaut's heirs claim that there has descended to them a perfect legal title or a grant in fee simple of the lands in question; if such is the fact, there is no necessity for this application to Congress; the courts of law are open to them, and have full power to adjudicate upon their claim. The committee, therefore, recommend the adoption of the following resolution:

Resolved, That the prayer of the memorialists ought not to be granted.